In the High Court of Uttaranchal, at Nainital.

Civil Misc. Writ Petition No. 516/2001 (S/S)
(Old No. 29735 of 1990)

Gopal Singh S/o Pooran Singh
R/o village Katarmal P.O. Kosi
District Almora ……Petitioner,

Vs.

1. The Union of the India, through
   Secretary Ministry of Environment
   And Forest Government of India
   New Delhi.
2. The District, G.B. Pant
   Institute of Himalayan
   Environment and Development
   Kosi, Almora
3. The Finance Officer, G.B. Pant
   Institute of Himalayan Environment
   And Development Kosi, Almora. …Respondents

Sri J.P. Joshi, learned counsel for the petitioner.
None appeared for the respondents.

Date: 05-08-2004

ORAL JUDGMENT (Per Hon'ble Mr. Justice Irshad Hussain)

By means of this writ petition under Article 226 of the Constitution of India the petitioner made a prayer to issue a writ in the nature of certiorari to quash the order dated 4-9-1990, whereby the services of the petitioner were terminated by respondent no. 2

2- The petitioner was appointed Chaukidar in institution of Himalayan Environment and Development, Kosi, Almora in the pay scale of Rs. 750-940/- with effect from 1.6.1989 vide office memo of the said dated (Annexure-1). The appointment was on adhoc basis for a period of one year. The appointment was liable to be terminated by one month's notice by either side without assigning any reason. The services of the petitioner were terminated by order dated 4-9-1999 with immediate effect stipulating that one month's salary in lieu of notice period admissible to him will be disbursed by money order (Annexure-3). The order was issued with the approval of the Director of the institute by the Finance Officer. These facts are not in dispute.

3- The petitioner alleged that his termination is wholly illegal as it has been passed without affording him any opportunity to explain his conduct; that some persons inimical to him made false complaint against him alleging their assault; that the Investigation Officer gave a certificate (Annexure-4) to the effect that he was not involved in the incident; that the post on which he was working is still in existence and in fact few more posts are vacant for which an advertisement had been published in a Newspaper on 31.8.1989 (Annexure-5) and that the arbitrary order of the termination of the service is illegal and without jurisdiction.

4- In the counter affidavit on behalf of the institute averments were made to defend the impugned order of termination by raising the plea that the termination was made purely on the basis of the terms and conditions of the order of appointments; that the termination order has not been passed taking into consideration any conduct and working capacity of the petitioner; that the advertisement made on 31.8.1989 has been rejected by the governing body of the institute which directed it not to directly recruit Chauikar for its security and it was directed to contact Central Industrial Security Force (C.I.S.F.) and employ the person from the same for providing the security as has been the practice in the various industrial units of the country and that there is absolutely no cause for the petitioner to contention that the services of none of the employees appointed along with the petitioner were terminated, averment made in the counter affidavit is to the effect that the appointment of the petitioner was in the maintenance group of the institute and the said post of Chaukidar in the maintenance group was not approved by the competent authority as yet and as such the services of the petitioner were terminated as per terms and conditions of the appointment and offer which was accepted by the petitioner. Plea was also taken that the petitioner has got efficacious alternative remedy to invoke the jurisdiction and remedy provided under the provisions of the Industrial Disputes Act, 1947.

5- The learned counsel for the petitioner argued that the impugned order of termination was passed in an arbitrary manner in negation of

the rule of law and it violated the constitutional guarantee provided under Articles 14 and 21 of the Constitution of India. Learned counsel also urged that the appointment was against the substantive vacancy as it has been advertised in a Newspaper and therefore the services could not have been terminated in the said manner. According to the learned counsel the tone and tenor of the letter of appointment that the appointment is purely on adhoc basis is thus of no significance and the service could have only been terminated after affording a reasonable opportunity to the petitioner to submit his case and point of view against the intended action. Learned counsel pressed in to service the following reported decision in support of his submission:-

1- **Prabhudayal Birari Vs. M.P. Rajya Nagrik Aapurti Nigam Ltd; JT 2000 (9) S.C. 373.**
2- **Sanjeev Kumar and others Vs. State of U.P. and another; [(1999)] 1 UPLBEC 575].**
3- **Om Prakash Goel vs. Himanchal Pradesh Tourism Development Corporation Ltd. Shimla and another; (1991) 3 Supreme Court Cases 291.**

6. In the first mentioned case the termination was held to be in contravention of the terms of employment in view of the fact that the notice of termination was served on the appellant on 8-6-1981 and he was relieved on 10-6-1981 and further that he was not paid one months' salary also. The terms of the appointment stipulated termination on one month's notice or on payment of one month's salary in lieu of notice by either side. As is evident from the above facts the termination order was in contravention of the specific condition mentioned in the appointment letter and this was a reason that the termination was found to be illegal. The facts of the reported decision of the Apex Court are therefore at variance and is of no help to the cause of the petitioner.

7- The facts of the case at serial no. 2 above were also not similar to the facts of the instant case in as much as the petitioner was not appointed on any substantive post and as is evident from the material on record the post of Chaukidar on which the petitioner was appointed

on adhoc basis was not approved by the competent authority. There is nothing on record to rebut the contention made in the counter affidavit and therefore the view taken by the learned Singh Judge of the Allahabad High Court that temporary appointment against the substantive vacancy can not be put to naught by termination order without complying with the rules of natural justice does not support the contention of the petitioner.

8- So far as the decision of the Apex Court mentioned at serial no.3 above is concerned, it is of significance that the order of the termination of the temporary employee in that case was found to be illegal on the basis firstly that though the termination order appear to be termination simpliciter it in fact was a camouflage for an order of punishment and secondly the juniors were retained in service in contravention of the mandate of Articles 14 and 16 of the Constitution. In the instant case there is nothing to indicate that the order of termination was punitive and further it is not the case that it was case of retrenchment and therefore the principles laid down in the reported decision also does not help the case of the petitioner.

9- It is of significance that the offer of appointment for the post of Chaukidar was made to the petitioner on 1.6.1989 (Annexure-2) and it has been clearly stipulated in it that the appointment is on adhoc basis and is liable to be terminated by one month's notice by either side without assigning any reason. There can be no doubt that he was never given status of a permanent employee and continued to hold the post on adhoc basis and therefore the employer has a right to terminate the appointment under the terms of the appointment letter and his status. It need to be stated here that is the case of **State of U.P. vs. Kaushal Kishore Shukla; (1991) 1 SCC 691** the Apex Court has held that an employer has always a right to terminate the services of a purely temporary employee without assigning any reason. In that case the incumbent was appointed on adhoc basis on 18-2-977 as an Assistant Auditor for a fixed period ending on 31-8-1977. The appointment was purely temporary and was liable to be terminated at any time without assigning any reason. The term was extended from time to time. There were adverse entries in his A.C.R. and his services were terminated simpliciter. The termination was challenged on the

grounds that was by way of punishment and that is juniors were retained in violation of Article 14 and 16 of the Constitution of India. The Apex Court rejected both the grounds and held that as a temporary employee he has no right to hold the post. It was also held that provisions of Articles 14 and 16 are attracted only in the case of retrenchment and not where the termination is simpliciter even because of unsuitability.

10- The principle enunciated by the court was also followed in the case of **Triveni Shankar Saxena vs. State of U.P.; A.I.R. 1992, Supreme Court 496** on the premise that the employee remained temporary all through and his services were terminated simpliciter as his confidential record was not up to the mark.

11- Reference may also be made to the decision of the Apex Court in the matter of **G.B. Pant Agricultural and Tech. University Vs. Keshav Ram; (1994) 4 SCC 437** and wherein the termination of Assistant Block Superintendent working in temporary capacity was not found to be illegal. In that case under condition no.9 of the conditions of appointment the services were liable to be terminated by one month's notice or pay in lieu thereof. The temporary appointment was made on 30-11-1972 and his services were terminated on 26.3.1979 as he was found to be irregular and absent without leave. It was held that it is open to the authorities in terms of the order of appointment or the relevant rules to terminate the service of a temporary employees without conducting an enquiry.

12- The board features of the above mentioned cases are not at variance in so far as the adhoc/ temporary capacity of the employees is concerned and since the termination was according to the condition of the appointment and the same being termination simpliciter the same was illegal nor in violation of the Articles 14 and 16 of the Constitution of India. In other words there is nothing to show that the impugned order of the termination of the petitioner was illegal and without jurisdiction.

13- For reasons aforesaid there is no merit in this petition and the same is liable to be dismissed. The petition is dismissed Conditional interim stay granted on 15.11.1990 is vacated. No order as to costs.

(Irshad Hussain, J.)

ISB